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August 19, 2013

The Honorable James L. Robart
United States District Court
Western District of Washington
700 Stewart Street, Suite 14128
Seattle, WA 98101-9906

Re: Microsoft Corp. v. Motorola Mobility, Inc.
Case No. C10-1823-JLR

Dear Judge Robart:

Pursuant to the Court's order at the August 13, 2013 Pretrial Conference, Motorola submits its revised Preliminary Jury Instructions. Included in this submission is a revised version of Motorola's Preliminary Instruction No. 2, which describes the claims and defenses in this case.

Motorola also includes Preliminary Instruction No. 2A, which sets forth the Court's RAND rate and range. This Preliminary Instruction No. 2A is materially similar to the instruction we proposed in Motorola's motion in limine filed July 29, 2013 (Dkt. 797), which sought to exclude the Court's RAND order. The Court denied this MIL in an oral ruling on August 13, 2013. Following instruction from the Court on August 13, 2013, denying the MIL, Motorola revised and is resubmitting its alternative instruction, while seeking to preserve its appellate rights on this issue as set forth in the proposed alternative instruction.

Also included in Motorola's submission is a revised version of Preliminary Instruction No. 18 and Final Instruction No. 11 – Stipulations of Fact. The parties previously agreed to preliminary and final instructions consisting of stipulated facts, but did not include in their proposal any stipulated facts. Motorola's revised version of Preliminary Instruction No. 18 and Final Instruction No. 11 now includes facts on which the parties agree, which are supported by the April 19, 2013 Findings of Fact and Conclusions of Law (Dkt. 673), as well as facts on which the parties agree as set forth in their respective timelines filed on August 16, 2013 (Dkt. 850, 852.)

With the exception of the revisions explained above and contained in Motorola's submission, Motorola's proposed Preliminary and Final Instructions are unchanged. (*See* Dkt. 790-791.) To the extent that either party believes that the jury should be instructed on conclusions of law

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set forth in the April 19, 2013 Findings of Fact and Conclusions of Law, or any other prior order of this Court, it is Motorola's position that those legal instructions should be set forth in separate jury instructions, which is consistent with the parties' prior submissions. (*See e.g.*, Dkt. 791, Microsoft's Final Instruction No. 18(f) (citing Dkt 335, 17-19), Motorola's Final Instruction No. 19 (citing Dkt. 335, 24-25), Motorola's Final Instruction No. 20 (citing Dkt. 673, ¶ 73), Motorola's Final Instruction No. 22 (citing Dkt. 335, 25), Microsoft's Final Instruction No. 29 (citing Dkt. 188 and 335).

Respectfully,

SUMMIT LAW GROUP PLLC

/s/ Ralph H. Palumbo

Ralph H. Palumbo

Enclosure

cc: All Counsel of Record